

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

GRAHAM - FIELD, INC., et al

Plaintiffs

Vs

E1 Enterprises, Inc., et. al.

Defendant

CIVIL NO. 98-1306 (DRD)
CIVIL ACTION

**E1'S SUPPLEMENTAL OPPOSITION TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT - ROBINSON PATMAN**

TO THE HONORABLE COURT:

COMES NOW defendant E1 ENTERPRISES, INC., D/B/A TUFFCARE, represented by the undersigned attorney, and most respectfully STATES, ALLEGES and PRAYS:

On January 30, 2004 Plaintiffs filed a "cross motion" for summary judgment for their Robinson Patman claims. (See Docket 231.)

In their "cross motion" plaintiffs seek "automatic damages" alleging price discrimination in wheelchairs. (See Exhibit 35 attached to Docket 230.)

Plaintiffs alleged that wheelchairs were sold at lower prices to MedEx. Plaintiffs compares prices from the 1996 - 1997 time period with several sales to MedEx in 1998. At the outset we point out that plaintiffs fail to make a valid Robinson Patman case because they are comparing sales from different time periods. This is of particular importance in light of the fact that when the purported disfavored sales to GFE were made, MedEx did not even exist. MedEx started up operations in November 1997. (See Docket 230, ¶ 16; *GFE's Rule 311.12 Statement of Disputed Facts.*)

Graham Field, Inc. v. E1 Enterprises, Inc., 98-1306
(DRD)

E1's Supplemental Opposition to Plaintiffs' Cross
Motion for Summary Judgment

Regardless, we are attaching several invoices that show that the prices charged to MedEx in 1998 were actually *higher* than the prices charged to GFE during 1996 - 1997. These invoices create a genuine factual dispute (i.e. whether E1 gave better prices to MedEx than those given to GFE).

In its cross motion for summary judgment GFE presented several table that, in its view, showed that MedEx was given favored pricing. The following tables show, for each item included in plaintiffs cross motion for summary judgment, a comparison between prices given to GFE from the 1996 - 1997 time period to prices given to MedEx from December 1997 to 1998. (See Exhibit 35 attached to Docket 130.) To alleviate the reader's burden, we follow the same order used by GFE in its cross motion.

I. 260 BL 18" Wheelchair

Date	Sales price to GFE	Representative Sales to MedEx	Diff.	Date	Invoice # (See Attached)
1996 - 1997	\$ 120.00	\$ 147.00	(\$27.00)	12/20/1997	70303
1996 - 1997	120.00	147.00	(\$27.00)	3/19/1998	73379
1996 - 1997	120.00	147.00	(\$27.00)	4/10/1998	73938
1996 - 1997	120.00	147.00	(\$27.00)	4/16/1998	74233
1996 - 1997	120.00	147.00	(\$27.00)	5/06/1998	74828

Graham Field, Inc. v. E1 Enterprises, Inc., 98-1306
(DRD)E1's Supplemental Opposition to Plaintiffs' Cross
Motion for Summary Judgment

II. 260 EBL 18" Wheelchair

Date	Sales price to GFE	Representative Sales to MedEx	Diff.	Date	Invoice # (See Copies Attached as Exhibit to this Motion)
1996 - 1997	\$ 154.00	\$ 183.00	(\$29.00)	12/20/1997	70303
1996 - 1997	154.00	183.00	(\$29.00)	3/19/1998	73379
1996 - 1997	154.00	183.00	(\$29.00)	4/10/1998	73938
1996 - 1997	154.00	183.00	(\$29.00)	4/16/1998	74233
1996 - 1997	154.00	183.00	(\$29.00)	5/06/1998	74828

III. 277 EBL Reliance Wheelchair

Date	Sales price to GFE ¹	Representative Sales to MedEx	Diff.	Date	Invoice # (See Copies Attached as Exhibit to this Motion)
1996 - 1997	\$ 192.00	\$ 223.00	(\$31.00)	12/20/1997	70303
1996 - 1997	192.00	223.00	(\$31.00)	3/19/1998	73379

¹See Exhibit 35 attached to Docket 130.

Graham Field, Inc. v. E1 Enterprises, Inc., 98-1306
(DRD)E1's Supplemental Opposition to Plaintiffs' Cross
Motion for Summary Judgment

III. 277 EBL Reliance Wheelchair

1996 - 1997	192.00	223.00	(\$31.00)	4/10/1998	73938
1996 - 1997	192.00	223.00	(\$31.00)	5/21/1998	75494

IV. 475 EDB 18" Daytona Recliner

Date	Sales price to GFE ²	Representative Sales to MedEx	Diff.	Date	Invoice # (See Copies Attached as Exhibit to this Motion)
1996 - 1997	\$ 454.74	\$ 535.00	(\$80.26)	12/20/1997	70303
1996 - 1997	454.74	535.00	(\$80.26)	3/09/1998	73319
1996 - 1997	454.74	535.00	(\$80.26)	3/19/1998	73379
1996 - 1997	454.74	535.00	(\$80.26)	4/10/1998	73938

²See Exhibit 35 attached to Docket 130.

Graham Field, Inc. v. E1 Enterprises, Inc., 98-1306
(DRD)

E1's Supplemental Opposition to Plaintiffs' Cross
Motion for Summary Judgment

V. 2000 EBK 18" Power-Chair

Date	Sales price to GFE	Representative Sales to MedEx	Diff.	Date	Invoice # (See Copies Attached as Exhibit to this Motion)
1996 - 1997	\$1,645.60	\$ 1,832	(\$186.40)	4/30/1998	74684

The attached exhibits defeat GFE's cross motion for summary judgment. They create a genuine dispute as to a material issue of fact. That is, whether or not prices charged to GFE were discriminatory.

WHEREFORE, we respectfully pray from this Honorable Court to DENY plaintiffs' *Cross Motion for Summary Judgment*.

I HEREBY CERTIFY that, on this same date, a true copy of this document has been sent via electronic mail to Mr. Kenneth J. McCulloch, BRG&S, 909 Third Avenue, 18th Floor, New York, New York 10022.

RESPECTFULLY SUBMITTED.

Hato Rey, Puerto Rico, March 31, 2004.

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